

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**RICHARD DALY,** )  
                        )  
Petitioner,         )  
                        )  
**vs.**                 )      **Case No. CIV-14-286-D**  
                        )  
**FNU RIOS, Warden, Lawton**     )  
**Correctional Facility; THE**     )  
**ATTORNEY GENERAL OF**         )  
**THE STATE OF OKLAHOMA,**     )  
                        )  
**Respondents.**         )

**REPORT AND RECOMMENDATION**

Petitioner, a prisoner appearing pro se, has filed a petition under 28 U.S.C. § 2254, an application for leave to proceed in forma pauperis, and a supporting affidavit. Docs. 1, 2. Pursuant to an order entered by United States District Judge Timothy D. DeGiusti, this matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B), (C). Having reviewed Petitioner's application, the undersigned finds that Petitioner has sufficient funds to prepay the filing fee of \$5.<sup>1</sup> Specifically, Petitioner's account reflects a balance of \$49.50. Because Petitioner does not qualify for authorization to proceed without prepayment of the filing fee, the undersigned recommends that Petitioner's application be

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<sup>1</sup> The undersigned notes that Petitioner's application appears to have been prepared for a civil rights action. See Doc. 2, at 1. Nonetheless, the financial information would be the same for either form of relief.

denied and that he be ordered to prepay the full \$5 filing fee for this action to proceed. 28 U.S.C. § 1915(a)(1). The undersigned further recommends that this action be dismissed without prejudice to refiling unless Petitioner pays the \$5 filing fee in full to the Clerk of the Court within twenty (20) days of any order adopting this Report and Recommendation.

Petitioner is advised that he may file an objection to this Report and Recommendation with the Clerk of this Court by April 14, 2014. Petitioner is further advised that failure to timely object to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F. 2d 656, 659 (10th Cir. 1991).

ENTERED this 25th day of March, 2014.



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SUZANNE MITCHELL  
UNITED STATES MAGISTRATE JUDGE